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State of California; and the California Stem Cell  
14 Research and Cures Finance Committee.

15 SUPERIOR COURT OF CALIFORNIA  
16 COUNTY OF ALAMEDA  
17

18 **PEOPLE'S ADVOCATE, et al.,**

19 Plaintiffs,

20 v.

21 **INDEPENDENT CITIZENS' OVERSIGHT  
22 COMMITTEE, et al.,**

23 Defendants.

24 **CALIFORNIA FAMILY BIOETHICS  
25 COUNCIL, LLC,**

26 Plaintiff,

27 v.

28 **CALIFORNIA INSTITUTE FOR  
REGENERATIVE MEDICINE, et al.,**

Defendants.

~~ENDORSED  
FILED  
ALAMEDA COUNTY  
OCT 1 3 2005  
CLERK OF THE SUPERIOR COURT  
By Alphonse J. Gade, Deputy~~

**ENDORSED  
FILED  
ALAMEDA COUNTY  
OCT 1 3 2005  
CLERK OF THE SUPERIOR COURT  
BY YASMIN SINGH, Deputy**

HG05206766 & 05AS02927.  
ASSIGNED FOR ALL PURPOSES TO  
JUDGE BONNIE LEWMAN SABRAW  
DEPT. 512

**DEFENDANTS' MOTION FOR  
JUDGMENT ON THE  
CONSOLIDATED PLEADINGS,  
NOTICE OF HEARING, AND  
MEMORANDUM OF POINTS &  
AUTHORITIES IN SUPPORT  
THEREOF  
(Code Civ. Proc., § 438)**

Date: November 17, 2005  
Time: 9 a.m.

**(Request for Judicial Notice in  
Support of Motion for Judgment on  
the Pleadings with Supporting  
Declaration of Tamar Pachter, and  
Proposed Order filed herewith)**

Action Filed: April 6, 2005

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1 **MOTION AND NOTICE OF HEARING**

2 TO PLAINTIFFS PEOPLE'S ADVOCATE, NATIONAL TAX LIMITATION  
3 FOUNDATION, AND CALIFORNIA FAMILY BIOETHICS COUNCIL, LLC, AND TO  
4 THEIR ATTORNEYS OF RECORD:

5 PLEASE TAKE NOTICE that on November 17, 2005, at 9:00 a.m. or as soon  
6 thereafter as the matter may be heard, in the courtroom of the Honorable Bonnie Lewman  
7 Sabraw, Department 512, Alameda County Superior Court, Hayward Hall of Justice, 24405  
8 Amador Street, Hayward, California, 94544, defendants the Independent Citizens' Oversight  
9 Committee; Robert N. Klein, Chairperson; Zach W. Hall, President of the California Institute for  
10 Regenerative Medicine; State Treasurer Phil Angelides; State Controller Steve Westly; the  
11 California Institute for Regenerative Medicine; the State of California; and the California Stem  
12 Cell Research and Cures Finance Committee, will and hereby do move this court for a final  
13 judgment on the pleadings as to the entirety of both complaints in this consolidated proceeding,  
14 pursuant to section 438 of the Code of Civil Procedure and the common law. This motion is  
15 based on this motion, notice of hearing, memorandum of points and authorities, and  
16 accompanying Request for Judicial Notice in Support of Motion for Judgment on the Pleadings  
17 and supporting Declaration of Tamar Pachter.

18 This motion is brought on the grounds that the complaints in their entirety and  
19 facts as to which this court may take judicial notice do not state facts sufficient to constitute a  
20 cause of action for invalidation of bonds, or injunctive relief against any of the defendants, and  
21 do state facts sufficient for the court to issue a declaration in defendants' favor and to rule that  
22 the bonds are valid. Defendants seek a final judgment, specifically including: 1) a declaration as  
23 a matter of law that Proposition 71, the California Stem Cell Research and Cures Act, as codified  
24 at California Constitution, article XXXV, Health & Safety Code, § 125290.10, et seq., and  
25 Government Code, § 20069, does not violate the California Constitution, 2) a declaration that  
26 bonds issued pursuant to the forgoing authority on May 9, 2005 are valid and enforceable  
27 obligations of the State of California, 3) an order denying the plaintiffs' prayers for injunctive  
28 relief on the same grounds, and 4) an order permanently enjoining the institution by any person

1 of any action or proceeding raising any issue as to which the judgment is binding and conclusive.  
2 Defendants ask that this motion be granted without leave to amend, and that this court enter a  
3 final judgment in defendants' favor.  
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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 Defendants in these consolidated actions respectfully submit this Memorandum of  
3 Points and Authorities in support of their Motion for Judgment on the Consolidated Pleadings.

4 **INTRODUCTION**

5 This is a consolidated validation proceeding to determine the validity of bonds  
6 issued pursuant to Proposition 71 and the California Stem Cell Research and Cures Bond Act of  
7 2004 (Health & Saf. Code, § 125291.10 et seq.). A year ago, California's voters determined to  
8 fund cutting-edge stem cell research in California by issuing three billion dollars in general  
9 obligation bonds over the course of ten years. Plaintiffs in these consolidated cases charge that  
10 Proposition 71 is invalid on its face, invoking a laundry list of constitutional, statutory, and  
11 common law theories. The voters' will as expressed through the initiative process is entitled to  
12 great deference. Yet the mere pendency of these challenges, even though they are without merit,  
13 has effectively prevented the state from marketing the bonds and directly interfered with the  
14 state's ability to implement Proposition 71. In order to sell the bonds that will fund the research,  
15 this validation proceeding must be finally resolved on its merits. In this context, time is critical.  
16 Even if it were not, there is no reason to delay resolution. These challenges require no  
17 development beyond judicially noticeable facts and so may be resolved on the pleadings, as a  
18 matter of law. Accordingly, defendants move this court for an order declaring the validity of  
19 Proposition 71 and of the bonds, as provided in Code of Civil Procedure section 870.

20 **STATEMENT OF FACTS**

21 On November 2, 2004, the voters approved Proposition 71, the California Stem  
22 Cell Research and Cures Act (Act) (see Prop. 71, Defendants' Request for Judicial Notice in  
23 Support of Motion for Judgment on the Pleadings and Declaration of Tamar Pachter in Support  
24 (RJN) & Exh. A<sup>1/</sup>), with 59.1 percent of the votes cast. (See RJN, ¶ 2 & Exh. B.)

25 Proposition 71 is an innovative, ambitious, and crucial state program. The Act  
26 authorizes and funds pioneering stem cell and other scientific research in the state, especially  
27 research of a type that the federal government has largely refused to fund, for the development of  
28

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1. References to RJN incorporate references therein to the Declaration of Tamar Pachter.

1 regenerative medical treatments and cures. (Prop. 71, § 3.) By approving Proposition 71, the  
2 voters sought not only to fund this research for its own sake, but also to build an industry that  
3 would contribute significantly to the economy and prestige of the State. (*Ibid.*)

4           Section 2 of Proposition 71 includes declarations and findings that establish its  
5 important public purpose: It notes that half of California's families suffer or will suffer from a  
6 variety of incurable diseases or injuries and that recent medical advances have discovered that  
7 there is a potential for cure and treatment of incurable diseases and injuries in regenerative  
8 medical therapies using stem cells. (Prop. 71, § 2.) It notes that this potential cannot be realized  
9 without adequate funding to advance research, therapies, and clinical trials, and that the federal  
10 government is not currently providing sufficient funding. (*Ibid.*) The Act is designed to fill this  
11 gap by funding stem cell research for the development of treatments and cures. (*Ibid.*)

12           In fulfilment of these goals, the voters amended the California Constitution,  
13 adding article XXXV, which creates the California Institute for Regenerative Medicine (CIRM),  
14 and establishes a right to conduct stem cell research, especially the type of stem cell research not  
15 otherwise funded by the federal government. (See Cal. Const., art. XXXV, § 5.) The  
16 Constitution authorizes CIRM to make grants and loans for stem cell research, research facilities  
17 and other research opportunities that will result in cures for diseases and injuries; to support all  
18 stages of the process of developing cures; and to establish standards and oversight for research  
19 and facilities development. (*Id.*, art. XXXV, § 2.)

20           The Act also adds to the Health & Safety Code Chapter 3, beginning with section  
21 125290.10, the California Stem Cell Research and Cures Bond Act. These statutes create the  
22 Independent Citizens' Oversight Committee (ICOC), CIRM's governing board. The ICOC has  
23 authority to make grants and loans in California; to oversee CIRM's operations; and to determine  
24 research standards, policies on intellectual property rights, and rules and regulations. (Health &  
25 Saf. Code, § 125290.40.) It is conceived as a panel of experts, whose members are relatively  
26 insulated from politics because they are appointed on the basis of their qualifications as they  
27 relate to matters within the ICOC's responsibility, including: stem cell research, administration  
28 of scientific and medical research grants, high achievement in the sciences, management of

1 multi-million dollar research grants, development of innovative medical therapies, and disease  
2 advocacy. (*Id.*, § 125290.20, subd. (a).) Based on these criteria, elected state officials appoint 22  
3 of the ICOC's 29 members. (*Id.*) Five members of the ICOC are executive officers of five of the  
4 University of California campuses, appointed by their chancellors. (*Id.*, § 125290.20, subd.  
5 (a)(1).) The two remaining ICOC members are its chair and vice chair, whom the other ICOC  
6 appointees elect from nominations made by four constitutional officers. (*Id.*, § 125290.20, subd.  
7 (a)(5), (a)(6).) ICOC members and their alternates take the state's oath of office (see Cal. Const.,  
8 art. XX, § 3) and file the disclosure forms required of all officers of state agencies by the Political  
9 Reform Act (Gov. Code, § 81000, et seq.). (Health & Saf. Code, § 125290.30, subd. (g).)

10           The Act contains specific public and financial accountability standards. It  
11 requires the ICOC to issue an annual public report, and to commission an annual independent  
12 financial audit to be provided to and publicly reported on by the Controller. (Health & Saf.  
13 Code, § 125290.30, subd. (a), (b).) It creates a Citizens' Financial Accountability Oversight  
14 Committee that is subject to open meeting laws and that is chaired by the Controller and  
15 populated with six public members, five of whom are appointed by state executive or legislative  
16 officers, and one of whom is appointed by the ICOC chair. (*Id.*, § 125290.30, subd. (c).) Public  
17 transparency and accountability is further addressed by providing that, unless otherwise expressly  
18 exempted, meetings of the ICOC are subject to the Bagley-Keene Open Meeting Act (Gov. Code,  
19 § 11120, et seq.); CIRM records are subject to the Public Records Act (*id.*, § 6250, et seq.);  
20 CIRM is subject to the same provisions of the Public Contract Code applicable to the University  
21 of California; and CIRM is subject to the Political Reform Act (*id.*, § 81000, et seq.). (Health &  
22 Saf. Code, § 125290.30, subd. (d), (e), (f), (g).) The regulations and standards that the ICOC  
23 promulgates are generally subject to the Administrative Procedure Act (Gov. Code, § 11371 et  
24 seq.). (Health & Saf. Code, § 125290.40, subd. (j), (k).)

25           Precisely because CIRM's work involves science and standards that are new and  
26 evolving, and in recognition of the expertise required of the ICOC's members, the Act delegates  
27 certain decision making authority to the ICOC. The Act also delimits the exercise of that  
28 discretion. For example, the ICOC must insure that the state benefits from patents, royalties and

licenses that result from state-financed research, and that the ICOC must give a preference to California suppliers. (Health & Saf. Code, § 125290.30, subd. (h), (i).) The Act expressly limits the discretion of the ICOC by demanding that certain specific criteria be met, for example, with respect to: allocating funds (*id.*, § 125290.70); setting scientific and medical standards (*id.*, § 125290.35, subd. (b)); determining the primary responsibilities of the chair and vice chair (*id.*, § 125290.45, subd. (b)(1)); determining the criteria for choosing members of advisory working groups, which are designed to provide more specific expertise to the ICOC (*id.*, §§ 125290.50, subd. (b); 125290.55, subd. (a); 125290.60, subd. (a); 125290.65, subd. (a)); and awarding grants (*id.*, § 125290.70, subd. (a)).

The bonds that fund the research and work of CIRM are issued as provided in the State General Obligation Bond Law. (Health & Saf. Code, § 125291.35.) The six-member Finance Committee with authority to issue the bonds includes the State's Treasurer, Controller and Director of Finance, as well as three ICOC members, and is chaired by the Treasurer. (*Id.*, § 125291.40, subd. (a).) Proceeds of the bonds are deposited in the State Treasury, with the exception of funds used to repay interim debt. (*Id.*, § 125291.25.)

## PROCEDURAL HISTORY

These cases are the latest attempts to stymie the will of the voters by interfering with the state's ability to implement Proposition 71. On February 22, 2005, Californians for Public Accountability and Ethical Science (CPAES) filed a Petition for Writ of Mandate invoking the original jurisdiction of the California Supreme Court. (RJN, ¶ 3 & Exh. C.) The CPAES petition sought to invalidate Proposition 71 on a host of grounds (all of which are repeated herein, in the complaint of the California Family Bioethics Council (CFBC) (compare RJN, Exhs. C & K)).<sup>2/</sup> The next day, plaintiffs People's Advocate and National Tax Limitation Foundation filed a Petition for Writ of Mandate, Prohibition, Certiorari and/or other Appropriate Relief, also seeking to invoke the original jurisdiction of the California Supreme Court. (RJN, ¶ 4 & Exh. E.) As here, in the Supreme Court plaintiffs alleged that Proposition 71 on its face

2. Counsel for CFBC also represented CPAES in the California Supreme Court. (See RJN, Exh. C at p. 1.)

1 violates article XVI, section 3 of the California Constitution by appropriating state funds to an  
2 entity not under the exclusive management and control of the State. (Compare RJN, Exhs. D &  
3 I.) The state challenged the legal merit of both petitions, but urged the high court to assert  
4 original jurisdiction to decide the petition in the state's favor. (RJN, ¶ 5 & Exhs. E & F.) The  
5 Supreme Court denied the petitions without prejudice on March 23. (RJN, ¶ 6 & Exhs. G & H.)

6 Less than two weeks after the Supreme Court denied their petition, on April 6,  
7 2005, Peoples' Advocate and National Tax Limitation Foundation filed a taxpayer action for  
8 declaratory and injunctive relief in this court, seeking to invalidate the Act (the Alameda  
9 Complaint). (RJN, ¶ 7 & Exh. I.) On April 26, defendants answered with a general denial.<sup>3/</sup>  
10 (RJN, ¶ 8.) On May 9, the Finance Committee met pursuant to Health & Safety Code sections  
11 125291.40 and 125291.45, and authorized issuance of \$3 billion in general obligation bonds.  
12 (RJN, ¶ 9 & Exh. J.) On June 9, defendants moved for judgment on the pleadings on the  
13 Alameda Complaint. (RJN, ¶ 10.) That motion, however, was never heard.

14 Three days before expiration of the 60-day limitations period (see Code Civ. Proc.  
15 §§ 860, 864), on July 6, 2005, CFBC filed a reverse validation action challenging the validity of  
16 Proposition 71 and the bonds in Sacramento Superior Court. (RJN, ¶ 11.) Shortly thereafter,  
17 CFBC filed an amended complaint (CFBC Amended Complaint). (*Id.*, Exh. K.) Defendants  
18 then took their motion for judgment on the pleadings on the Alameda Complaint off calendar,  
19 and instead moved this court to transfer the CFBC case from Sacramento to be consolidated with  
20 the Alameda Complaint. (RJN, ¶ 12.) On August 4, this court granted defendants' motion to  
21 transfer and consolidate the two cases for all purposes, pursuant to the validation statutes. (RJN,  
22 ¶ 13; see Code Civ. Proc., §§ 403, 865.) On August 14, CFBC completed publication of  
23 summons. (RJN, ¶ 14.) On August 31, defendants answered the CFBC action. (RJN, ¶ 15.) On  
24 September 19, the Sacramento Superior Court transferred the CFBC action to this court. (RJN,  
25 ¶ 16.) The two cases, both at issue, are now consolidated before this court as a single reverse  
26 validation action governed by Code of Civil Procedure section 860 et seq.

27  
28 3. The Alameda Complaint has since been amended: the Governor and Lieutenant Governor  
have been dismissed, and the President of CIRM has been added as a defendant. CIRM President  
Zach W. Hall answered the Alameda Complaint on September 28, 2005.

1                                    **BASIS FOR THE MOTION AND STANDARD OF REVIEW**

2                                    Facial challenges, such as those at issue here, should be resolved as a matter of  
3 law. (See *Alfaro v. Terhune* (2002) 98 Cal.App.4th 492, 509-510; see also *Frohlinger v.*  
4 *Richardson* (1923) 63 Cal.App. 209, 214 [in passing on the constitutionality of a statute, court is  
5 confined to the face of the law itself and matters judicially noticeable].) Where, as here,  
6 plaintiffs do not allege specific facts to support an "as applied" challenge, the court may treat the  
7 claim as a facial challenge that may be resolved on the pleadings.<sup>4/</sup> (See *Alfaro, supra*, at pp.  
8 509-510.) Facial challenges are suited to disposition on a motion for judgment on the pleadings.  
9 (See e.g., *Shea Homes Ltd. Partnership v. County of Alameda* (2003) 110 Cal.App.4th 1246,  
10 1254 [*Shea Homes*] [affirming judgment on the pleadings in case challenging constitutional  
11 validity of Measure D]; see also *Flavell v. City of Albany* (1993) 19 Cal.App.4th 1846, 1851  
12 [interpretation of an initiative is a "pure question of law"].)

13                                    Like a general demurrer, judgment on the pleadings should be granted when the  
14 complaint fails to allege facts sufficient to state a cause of action. (See *Shea Homes, supra*, 110  
15 Cal.App.4th 1246, 1254 [citing Code Civ. Proc., § 438, subd. (c)(1)(B)(ii); *Smiley v. Citibank*  
16 (1995) 11 Cal.4th 138, 145-146].) The allegations of the complaint are admitted, except that the  
17 motion does not admit conclusions of fact or law, opinions, speculation, allegations contrary to  
18 law, or judicially noticed facts. (See *Shea Homes, supra*, at p. 1254.) In an action for declaratory  
19 relief, the court may grant a declaration adverse to the plaintiff on a motion for judgment on the  
20 pleadings. (See *Wilson v. Board of Retirement* (1957) 156 Cal.App.2d 195, 200-203.)

21                                    The standard of review applied to an initiative adopted by the voters is heavily  
22 weighted in favor of validity. The people of California reserved to themselves the initiative  
23 power, "to tear through the exasperating tangle of the traditional legislative procedure and strike  
24 directly toward the desired end.'" (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of*  
25 *Equalization* (1978) 22 Cal.3d 208, 228-229 [*Amador Valley*], quoting Key & Crouch, *The*  
26 *Initiative and the Referendum in California* (1939) at p. 435.) The initiative power is "one of the  
27

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28                                    4. CFBC occasionally alleges that its challenge is "as applied," but does not allege any  
supporting facts. (See CFBC Amended Complaint, ¶¶ 14, 15 at p. 5; ¶ 27 at p. 9.)



1 most precious rights of our democratic process." (*Associated Home Builders of the Greater East*  
2 *Bay, Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591.) The California Supreme Court has  
3 emphasized that it is a court's solemn duty to uphold an initiative, resolving all doubts in its  
4 favor, unless its unconstitutionality clearly, positively, and unmistakably appears. (*Legislature v.*  
5 *Eu* (1991) 54 Cal.3d 492, 500-501; see also *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d  
6 805, 814-815.)

7 Initiatives are construed on the basis of the voters' intent. (*People v. Jones* (1993)  
8 5 Cal.4th 1142, 1146; see also *Howard Jarvis Taxpayers Assn. v. City of San Diego* (1999) 72  
9 Cal.App.4th 230, 235.) In determining the intent of the voters, the court must first look to the  
10 words of the measure. Only if the text is ambiguous does a court turn to extrinsic evidence, such  
11 as the ballot pamphlet, to aid in interpretation. (*Board of Supervisors of San Diego County v.*  
12 *Lonergan* (1980) 27 Cal.3d 855, 863.)

13 Moreover, because plaintiffs seek to invalidate the Act in its entirety, they must  
14 satisfy the high standard for facial challenges:

15 To support a determination of facial unconstitutionality, voiding  
16 the statute as a whole, petitioners cannot prevail by suggesting that  
17 in some future hypothetical situation constitutional problems may  
18 possibly arise as to the particular *application* of the statute . . . .  
Rather, petitioners must demonstrate that the act's provisions  
inevitably pose a present total and fatal conflict with applicable  
constitutional prohibitions.

19 (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180-181; see also *People v. Green*  
20 (2000) 79 Cal.App.4th 921, 925.) As set forth below, as a matter of law, plaintiffs cannot meet  
21 these standards.

## 22 ARGUMENT

23 These consolidated cases fail to state a cause of action to invalidate the bonds  
24 because, as a matter of law, Proposition 71 complies with all constitutional requirements.  
25 Together, the CFBC and Alameda complaints contain three causes of action: one for invalidation  
26 of the bonds, and two others for declaratory and injunctive relief.<sup>5/</sup> The CFBC complaint, in

27  
28 5. The single theory of relief alleged in the Alameda Complaint is fully encompassed by  
the CFBC Amended Complaint. For clarity and convenience, this memorandum combines the  
(continued...)

1 particular, is peppered with several theories for relief. These theories fall into three broad  
2 categories: violations of constitutional limitations on the initiative power; constitutional  
3 challenges to the substance of the Act; and statutory and common-law challenges to the  
4 substance of the Act. Considering each category in turn, as a matter of law, the allegations fail to  
5 state a claim for invalidation of the bonds, or for the declaratory and injunctive relief plaintiffs  
6 demand.

7 **I. PROPOSITION 71 DID NOT VIOLATE CONSTITUTIONAL**  
8 **LIMITATIONS ON THE INITIATIVE PROCESS.**

9 The CFBC Amended Complaint alleges five theories of invalidity based on  
10 constitutional limitations on the exercise of the initiative power: 1) violation of the "single  
11 subject" rule; 2) unlawful constitutional revision; 3) violation of the "full text" rule; 4) failure of  
12 due process in the election; and 5) violation of the rule forbidding assignment of a function to a  
13 private entity. Each theory fails as a matter of law.

14 **A. Proposition 71 Conforms to the "Single Subject" Rule.**

15 Article II, section 8, subdivision (d) of the Constitution<sup>6/</sup> states: "An initiative  
16 measure embracing more than one subject may not be submitted to the electors or have any  
17 effect." The "single subject" rule does not limit the initiative power of the people, but instead  
18 preserves the integrity of this power by requiring proponents to draft proposals that allow  
19 "intelligent and informed choices, free from deception and forced compromises." (*Brosnahan v.*  
20 *Brown* (1982) 32 Cal.3d 236, 269.) Courts liberally interpret this rule to uphold legislation that  
21 includes a matrix of reasonably germane elements. (See *California Assn. of Retail Tobacconists*  
22 *v. State of Cal.* (2003) 109 Cal.App.4th 792, 809 [CART].) An initiative does not violate the  
23 single subject rule if all its parts are reasonably germane to each other and to the initiative's  
24 general purpose. (See *Shea Homes, supra*, 110 Cal.App.4th 1246, 1255 [citing *Senate of the*

25  
26  
27 5. (...continued)  
28 allegations for discussion.

6. Unless otherwise noted, references to the Constitution are to the California Constitution.

1 *State of Cal. v. Jones* (1999) 21 Cal.4th 1142, 1157].) All doubts must be resolved in favor of  
2 the initiative. (*Shea Homes, supra*, at p. 1255.)

3 The purposes of Proposition 71 are set forth in detail in the text. (Prop. 71, § 3.)  
4 Generally, that purpose is to provide state funding for stem cell research with the greatest  
5 potential for therapies and cures, focusing on research opportunities that are unlikely to receive  
6 federal funding. CFBC alleges that Proposition 71 violated the single subject rule because it  
7 included five "subjects" in addition to public funding for stem cell research:

8 (a) laws and regulations concerning conflicts of interest of public  
9 officials, particularly the members of the ICOC and its operating  
10 committees; (b) laws and regulations concerning conflicts of  
11 interest standards for faculty and administrators of the University  
12 of California; (c) funding, laws and regulations for research and  
13 projects unrelated to stem cell research, designated in the initiative  
14 as "vital research opportunities"; (d) executive and administrative  
15 authority for the ICOC to negotiate, execute, perform and manage  
16 contracts to sell the intellectual property rights of the state for  
17 commercial exploitation; and (e) executive, legislative and  
18 administrative authority of the ICOC to act as the agent of the state  
19 of California "to negotiate standards with federal and state  
20 governments and research institutions." (CFBC Amended  
21 Complaint, ¶ 28.)

22 In *Shea Homes, supra*, 110 Cal.App.4th 1246, 1256-1257, the First District Court  
23 of Appeal recently examined the title, purpose, findings, and ballot materials (including the text  
24 of the referendum), to determine that Measure D did not violate the single subject rule. Similar  
25 analysis of CFBC's alleged distinct subjects reveals that they too are not just reasonably  
26 germane, but part of an interdependent system of statutes to carry out the single subject and  
27 purpose of Proposition 71, and that their inclusion did not mislead voters.

28 Although the complaints do not cite them, the conflict of interest provisions to  
which the CFBC complaint refers in items (a) and (b), quoted above, are found in Health &  
Safety Code, section 125290.30, subdivision (g), which creates limited exemptions – specifically  
for CIRM and the ICOC – from statutory and common law conflicts of interest provisions.  
Subdivision (g)(1) places limits on the application of the Political Reform Act (Gov. Code,  
§ 81000 et seq.) with respect to CIRM and the ICOC. Subdivision (g)(2) exempts members of  
the ICOC from statutory (Gov. Code, § 19990 (section 19990)) and common law doctrine of

1 incompatible offices. Subdivision (g)(3) limits the application of Government Code section 1090  
2 (section 1090) with respect to the ICOC. The reasons for these provisions are not relevant to the  
3 single-subject analysis (and are fully discussed below, in the context of CFBC's equal protection  
4 challenge, see discussion, *infra*, at pp. 20-23). What is pertinent to and dispositive of the single  
5 subject challenge is that these exceptions to conflict of interest rules are specific to CIRM and the  
6 ICOC; therefore, they are "reasonably interrelated and interdependent, forming an interlocking  
7 'package' deemed necessary by the initiative's framers to assure effective" functioning of CIRM  
8 and its governing board. (See *Amador Valley*, *supra*, 22 Cal.3d 208, 231.) Further, none of these  
9 provisions could have been misleading to a voter, because they were explicitly set out in the  
10 ballot materials as part of the text of the initiative. (RJN, ¶ 17 & Exh. A; see *Shea Homes*, *supra*,  
11 110 Cal.App.4th 1246, 1257).

12           The allegation that the Act provides for "funding, laws and regulations for  
13 research and projects *unrelated* to stem cell research," (CFBC Amended Complaint, ¶ 28(c)  
14 (emphasis added)), is incorrect. Although the Act permits funding of "other vital research  
15 opportunities" in addition to stem cell research, that term is both defined (see Health & Saf.  
16 Code, § 125292.10, subd. (y)), and delimited by the language of article XXXV, section 2,  
17 subdivision (a), which provides that CIRM's purpose is: "To make grants and loans for stem cell  
18 research, for research facilities, and for other vital research opportunities to realize therapies,  
19 protocols, and/or medical procedures that will result in, as speedily as possible, the cure for,  
20 and/or substantial mitigation of, major diseases, injuries and orphan diseases." When a public  
21 commission is granted power over property of the state, and the language of the grant contains  
22 terms that qualify that power, those qualifications are to be construed as conditions beyond which  
23 the grantee of the power cannot go. (*Panama-Pacific Int'l Exposition Co. v. Panama-Pacific*  
24 *Int'l Exposition Com'n of Cal.* (1918) 178 Cal. 746, 749-750 [*Panama-Pacific*].) As a matter of  
25 law, the ICOC is limited to funding only those "other vital research opportunities" "that will  
26 result in" the type of cures sought by the Act. Other vital research opportunities are therefore  
27 both germane and functionally related to stem cell research as a matter of law.

28

1 Finally, intellectual property rights, as well as medical and scientific standards, are  
2 also functionally related to stem cell research and a modern life sciences program. (See *Amador*  
3 *Valley, supra*, 22 Cal.3d 208, 230-231.) These are the mechanisms by which stem cell research  
4 is conducted and ICOC funding decisions are made. (Cal. Const., art. XXXV; Health & Saf.  
5 Code, § 125290.40.) These allegations do not state a single subject challenge

6 **B. Proposition 71 Amended But Did Not Revise the Constitution.**

7 The initiative may be used to amend, but not to revise, the Constitution. (Cal.  
8 Const., art. XVIII, § 3). This revision/amendment distinction requires the court to examine both  
9 the quantitative and qualitative effects of the measure on our constitutional scheme, as substantial  
10 changes in either aspect could constitute a revision. (*CART, supra*, 109 Cal.App.4th 792, 833-  
11 834 [citing *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 350].)

12 CFBC alleges that the Act violates article XVIII, section 3 "on its face and as  
13 applied" because:

14 [n]o public agency can exist under the representative form of  
15 government provided in the California Constitution when its  
16 governing officials are legally authorized to represent personal,  
17 professional and business interests that compromise their  
18 commitment to the public interest, to enter into contracts with, or  
19 receive grants from, their own agency, to appropriate funds in the  
20 hopes of benefitting members of their own families, or to act  
21 outside the management and control of the State. (CFBC  
22 Amended Complaint, ¶ 27.)

23 As a preliminary matter, there is no cognizable "as applied" challenge. "For a  
24 revision to be found, 'it must *necessarily or inevitably appear from the face* of the challenged  
25 provision that the measure will substantially alter the basic governmental framework set forth in  
26 our Constitution.'" (*CART, supra*, 109 Cal.App.4th 792, 834 [quoting *Legislature v. Eu, supra*,  
27 54 Cal.3d 492, 510].) The facial challenge fails because the allegations are irrelevant to this  
28 claim. These allegations do not refer to changes to the Constitution, but to changes in the Health  
& Safety Code. Even if these allegations are construed to assert a revision because CIRM and  
the ICOC are not within the state's management and control, they do not state a claim. (See  
*CART, supra*, at pp. 833-836; discussion, *infra*, at pp. 24-30.) Proposition 71 added one article

1 to the Constitution. Article XXXV only addresses stem cell research. Neither the quantity nor  
2 the quality of this change amount to a constitutional revision.

3 **C. Proposition 71 Did Not Violate the "Full Text" Rule.**

4 The last sentence of article IV, section 9 of the Constitution provides that: "A  
5 section of a statute may not be amended unless the section is re-enacted as amended." This, the  
6 "full-text" rule, only applies to the amendment of a statute, not to the implied repeal or implied  
7 modification of a statute. (See *Brosnahan v. Brown*, *supra*, 31 Cal.3d 236, 256-257.) Yet, to the  
8 extent that CFBC is alleging violation of the full text rule, implied repeal or implied modification  
9 is precisely what it alleges. (CFBC Amended Complaint, ¶¶ 21, 22.) The statutes CFBC lists in  
10 its Amended Complaint are not amended by the Act; their text remains unchanged. The Act  
11 merely limits the operation of certain statutes specifically with respect to CIRM and the ICOC.  
12 There are no cognizable grounds alleged for violation of the full text rule.

13 **D. Election Law Violations Did Not Render the Election Unfair.**

14 CFBC alleges various election law violations as a basis for relief. (CFBC  
15 Amended Complaint, ¶¶ 21-23, 29.) As a preliminary matter, these allegations are mooted by the  
16 election, except to the extent that they either state a statutory claim for an election contest, or  
17 allege a constitutional violation. (See *Chase v. Brooks* (1986) 187 Cal.App.3d 657, 662 [holding  
18 that once the election is held, election law compliance is moot, except to the extent that it is  
19 replaced by statutory election contest remedy].) In *Friends of Sierra Madre v. City of Sierra*  
20 *Madre* (2001) 25 Cal.4th 165, the Supreme Court held that a court's authority to invalidate an  
21 election is limited to the grounds specified in Elections Code section 16100, but noted an  
22 exception to this general rule for constitutional attacks. (*Id.*, at pp. 191-192 & fn. 17.) Citing  
23 *Horwath v. City of East Palo Alto* (1989) 212 Cal.App.3d 766, 777-778, the high court  
24 recognized that a failure of ballot materials may amount to a constitutional due process violation  
25 if they are so inaccurate and misleading as to prevent voters from making informed choices.  
26 (*Friends of Sierra Madre*, *supra*, at pp. 180-181; see also *People v. Scott* (2002) 98 Cal.App.4th  
27 514, 519 [review is for substantial compliance].)  
28

1 CFBC does not allege a statutory election contest. Further, CFBC cannot state a  
2 claim for a due process attack on the basis of inadequate election materials. First, the allegations  
3 of undisclosed statutory revisions (CFBC Amended Complaint, ¶¶ 21-23, 29 at p. 10:14-16) are  
4 cumulative and derivative of the constitutional revision allegations, which are without merit, as  
5 shown above. (See discussion, *supra*, at pp. 13-14.) In any event, these limitations on the  
6 application of various statutes were disclosed in the text of the Act, which was fully reproduced  
7 in the ballot materials. (RJN, ¶ 17 & Exh. A.) Similarly, failure to disclose lack of state  
8 management and control is no basis for a due process claim because, as fully set forth below,  
9 CIRM is subject to the exclusive management and control of the state. (See discussion, *infra*, at  
10 pp. 24-30.)

11 The remaining misrepresentations and omissions alleged (CFBC Amended  
12 Complaint, ¶ 29 at pp. 10:17-11:5) are belied by the ballot materials themselves. (RJN, ¶ 18 &  
13 Exhs. A, L.) There are no "financial projections of revenues and savings to the State" in the  
14 ballot materials, except to the extent that the Legislative Counsel's analysis of the fiscal effects  
15 of the Act stated that revenues and savings were generally contingent and "unknown." (*Id.*, Exh.  
16 L.) There are no "promises to focus on the most hopeful forms of stem cell research . . ."  
17 (CFBC Amended Complaint, *supra*, at p. 10:17-25.) Rather, the Act states a more complex set  
18 of priorities. It is "the intent of the people . . . in enacting this measure to . . . [m]aximize the use  
19 of research funds by giving priority to stem cell research that has the greatest potential for  
20 therapies and cures, specifically focused on pluripoent stem cell and progenitor cell research . . .  
21 that cannot, or are unlikely to, receive timely or sufficient federal funding, unencumbered by  
22 limitations that would impede the research." (Prop. 71, § 3.) This is not the promise CFBC  
23 alleges. Moreover, the arguments against Proposition 71 published in the ballot materials  
24 specifically argued that there were more promising forms of stem cell research. (RJN, ¶ 19 &  
25 Exh. L.) The CFBC disagrees about the relative value of various forms of stem cell research, but  
26 that is a difference in judgment; it does not allege a misrepresentation. The same analysis applies  
27 to the allegation that Proposition 71 misrepresented that it bans human reproductive cloning.  
28 (CFBC Amended Complaint, *supra*, at pp. 10:25-11:5.) The Act specifically bans "human

1 reproductive cloning," which it defines. (Cal. Const., art. XXXV, § 3; Health & Saf. Code,  
2 § 125292.10, subd. (k).) Further, the arguments against the initiative, also published in the  
3 ballot materials, made the claim that the Act permits human cloning. (RJN, ¶ 20 & Exh. L.)  
4 Accordingly, the voters could not have been misled. CFBC fails to state a due process challenge  
5 to the election.

6 **E. Proposition 71 Does Not Identify a Private Entity to Perform Any**  
7 **Function or to Have Any Power or Duty.**

8 Article II, section 12 of the Constitution provides, in relevant part: "No . . . statute  
9 proposed to the electors . . . by initiative, that . . . identifies any private corporation to perform  
10 any function or to have any power or duty, may be submitted to the electors or have any effect."  
11 CFBC alleges that Proposition 71 violates this provision because it "specifically mandates that  
12 ten (10) ICOC board members must be representatives of certain private disease advocacy  
13 organizations identified exclusively with ten (10) named diseases or conditions." (CFBC  
14 Amended Complaint, ¶ 25.)

15 Although it does not cite the Act, this allegation can only refer to Health & Safety  
16 Code section 125290.20, subdivisions (a)(3), (a)(4), and (a)(5). These provisions, however,  
17 contradict the allegation. The Act does not require ten ICOC members to be representatives of  
18 "certain private disease advocacy organizations." Rather, it requires that ten appointments be  
19 made "from among California representatives of California regional, state, or national disease  
20 advocacy groups" and lists those groups generically, by disease, rather than "specifically  
21 mandating" any particular organization. (Health & Saf. Code, § 125290.20, subd. (a)(3)(A), (B),  
22 (C) and subd. (a)(4), (5) [listing disease advocacy groups for "spinal cord injury and Alzheimer's  
23 disease;" "type II diabetes and multiple sclerosis or amyotrophic lateral sclerosis;" "cancer and  
24 Parkinson's disease;" "mental health;" and "HIV/AIDS"].) This is not a case in which the statute  
25 identifies a particular private entity to perform a function. (Compare with *Pala Band of Mission*  
26 *Indians v. Board. of Supervisors* (1997) 54 Cal.App.4th 565, 584-587 [holding that initiative  
27 which specifically identified a single applicant to perform a project violated article II, section 12,  
28 but that definition limiting applicant to that single entity was severable].) Rather, membership in



1 any qualifying disease advocacy group is a criterion for appointment. Article II, section 12  
2 simply does not apply.

3 **II. THE SUBSTANCE OF THE ACT IS CONSTITUTIONAL.**

4 Together, the complaints allege four theories of relief based on substantive  
5 constitutional challenges: 1) due process; 2) equal protection; 3) exclusive state management  
6 and control; and 4) autonomy of the Regents of the University of California (Regents). None of  
7 these challenges states a claim.

8 **A. The Act Does Not Violate Due Process Guarantees.**

9 Article I, section 7, subdivision (a) of the Constitution sets out the due process  
10 guarantee. Unlike due process under the federal constitution, the analysis conducted under state  
11 law does not require the claimant to show a property or liberty interest as a prerequisite to  
12 invoking due process protections. (*Gresher v. Anderson* (2005) 127 Cal.App.4th 88, 104-105.)  
13 To trigger state due process analysis, however, the claimant must identify some statutorily  
14 conferred benefit or interest of which he or she has been deprived. (*Id.*, at p. 105.) "The  
15 requirement of a statutorily conferred benefit limits the universe of potential due process  
16 claims . . . ." (*Ibid.*)

17 CFBC alleges that "[t]he conflicts of interest of the ICOC members violate the  
18 civil and constitutional rights of all people who deal with the ICOC – whether concerning  
19 contracts, grants, loans, project proposals or government activities, standards and regulations – to  
20 fair and impartial hearings before disinterested public officials." (CFBC Amended Complaint,  
21 ¶ 19.) This appears to be an effort to state a due process claim, but fails for lack of a statutorily  
22 conferred benefit or interest. Not every citizen adversely affected by governmental action can  
23 assert due process rights; identification of a statutory benefit subject to deprivation is a  
24 prerequisite to a viable due process claim. (See *Ryan v. California Interscholastic Federation-  
25 San Diego Section* (2001) 94 Cal.App.4th 1048, 1071.) Because the Act itself confers no  
26 particular benefit or interest, and because CFBC does not allege that the Act serves to deprive  
27 anyone of any other statutorily conferred benefit or interest, it cannot state a due process  
28 violation. (See *id.*, at pp. 1072-1073 [holding that statute which creates a right to a free public

1 education does not entitle student to participate in specific activities offered by school, which  
2 entitlement would be subject to deprivation only pursuant to constitutional due process].)

3 In any event, the Act does not suspend conflict of interest requirements in a way  
4 that would deprive anyone of a fair and impartial hearing. It requires ICOC members who have a  
5 financial interest in a grant, loan, or contract (or whose employer has any such interest) to  
6 disqualify themselves from participating in the decision, and forbids them from using their  
7 position to influence the decision in any way. (Health & Saf. Code, § 125290.30, subd.  
8 (g)(1)(A), (g)(3).) A member's failure to recuse himself or herself from such a decision will  
9 render the resulting grant, loan, or contract void under Government Code section 1090. (*Id.*,  
10 § 125290.30, subd. (g)(3).)

11 **B. The Act Does Not Violate Equal Protection Guarantees or Accord**  
12 **Special Privileges and Immunities.**

13 Article I, section 7 of the California Constitution also contains equal protection  
14 guarantees, found both in the equal protection clause (Cal. Const., art. I, § 7(a) ["A person may  
15 not be . . . denied equal protection of the laws . . ."]), and in the privileges and immunities clause  
16 (*id.*, art. I, § 7(b) ["A citizen or class of citizens may not be granted privileges or immunities not  
17 granted on the same terms to all citizens"])). A similar protection is found in article IV, section  
18 16, which prohibits special statutes. The analysis under all three provisions is the same. (See  
19 *Serrano v. Priest* (1971) 5 Cal.3d 584, 596, fn. 11; *Children's Hospital & Medical Center v. . .*  
20 *Bonta* (2002) 97 Cal.App.4th 740, 768-769 [*Children's Hospital*].)

21 The first prerequisite to a meritorious claim under the equal  
22 protection clause is a showing that the state has adopted a  
23 classification that affects two or more *similarly situated* groups in  
24 an unequal manner. . . . The "similarly situated" prerequisite  
25 simply means that an equal protection claim cannot succeed, and  
26 does not require further analysis, unless there is some showing that  
27 the two groups are sufficiently similar with respect to the purpose  
28 of the law in question that some level of scrutiny is required in  
order to determine whether the distinction is justified. . . . Persons  
who are similarly situated must be treated alike. . . . There is,  
however, no requirement that persons in different circumstances  
must be treated as if their situations were similar. (*People v.*  
*Rhodes* (2005) 126 Cal.App.4th 1374, 1383 [citations and  
quotations omitted].)

1 If the groups at issue are not similarly situated with respect to the legitimate purpose of the law,  
2 or if they are similarly situated, but receive like treatment, no claim is stated and the analysis  
3 stops. (See *id.*, at p. 1384.) If this first hurdle is passed, then the court reaches the second level  
4 of analysis. If the law impinges on a fundamental right, it is subject to strict scrutiny. (See *ibid.*)  
5 All other legislation passes constitutional muster if it bears a rational relationship to a legitimate  
6 state purpose. (See *ibid.*) Under this test, the law must be upheld if any reasonably conceivable  
7 state of facts could provide a rational basis for the classification. (*City & Cty. of San Francisco*  
8 *v. Flying Dutchman Park, Inc.* (2004) 122 Cal.App.4th 74, 83.) It is constitutionally irrelevant  
9 whether the conceivable reason for the challenged distinction actually motivated the passage of  
10 the law. (See *ibid.*) Further, an otherwise reasonable classification is not invalid because it is  
11 imperfect in that it results in some inequality. (*Children's Hospital, supra*, 97 Cal.App.4th 740,  
12 769.)

13 CFBC alleges violations of all three provisions, because:

14 Proposition 71 (a) restricts eligibility for membership in the  
15 powerful ICOC to representative advocates for only 10 named,  
16 specially privileged diseases and conditions, from the more than 70  
17 categories of diseases and conditions admitted in Proposition 71 to  
18 be proper candidates for stem cell research;<sup>[2]</sup> (b) restricts  
19 eligibility for the chairperson and vice-chairperson of the ICOC to  
20 people with unreasonably narrow qualifications, including  
21 mandatory membership in an organization representing one of the  
22 10 specially privileged disease advocacy categories; (c) restricts  
23 eligibility for the four positions on the ICOC from a "California  
24 life science commercial entity" to companies that are "not actively  
25 engaged in researching or developing therapies with pluripotent or  
26 progenitor stem cells," thereby excluding only people most likely  
27 to be experts in the initiative's primary field of research; (d)  
28 restricts the remaining membership in the ICOC to certain  
University of California representatives and other narrowly  
identified nonprofit organizations; (e) permits appointed members  
to participate through self-appointed surrogates; (f) has no  
members of the general public, no members who are elected public  
officials, no members from ethnic, religious or other minority  
groups, and no provision for removal of members; and (g) purports  
to grant special immunities to these public officials in the form of  
exemptions from the conflict of interest laws that govern all other  
public officials of this state. (CFBC Amended Complaint, ¶ 24.)

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7. This allegation is incorrect. The findings and declarations merely identify "more than 70  
other diseases and injuries" "that are currently incurable." (Prop. 71, § 2.) Proposition 71 does not  
identify any or all of these as likely candidates for stem cell research. (*Ibid.*)

1                                   **1.       The Challenged Classifications Are Not Similarly Situated.**

2                   In the above-quoted paragraph, items (a), (b), (c), (d), (e), and (f) fail to state a  
3 claim for any kind of equal protection violation because they cannot pass the first analytical  
4 hurdle: the groups listed are not similarly situated with respect to the legitimate purpose of the  
5 Act. One of the stated purposes of the Act is to create an ICOC composed of representatives  
6 from California's public and private university medical schools, research institutions, disease  
7 advocacy groups, and experts in the development of medical therapies. (See Prop. 71, § 3;  
8 Health & Saf. Code, § 125290.20, subd. (a).)

9                   CFBC implicitly admits the validity of the very distinction it challenges by  
10 acknowledging that some people are "experts in the initiative's primary field of research."  
11 (CFBC Amended Complaint, ¶ 24 at p. 8:4-5.) Those persons with expertise in the areas in  
12 which the ICOC must perform its duties, including, for example, developing research plans,  
13 setting medical and ethical standards, setting intellectual property standards, and financing, to  
14 name a few, are not similarly situated to those who lack these qualifications. Accordingly, the  
15 Act treats persons with qualifications differently than persons who lack them, whether they are  
16 members of the general public, or public officials, and regardless of race, ethnicity, religion or  
17 minority status. The Act treats members of California life science entities "not actively engaged  
18 in researching or developing therapies with pluripotent or progenitor stem cells," differently from  
19 those that are so engaged because the former group is less likely to have insuperable conflicts of  
20 interest. Item (e) (*id.*, at p. 8:7-8) does not allege a distinction of any kind. It is therefore  
21 unnecessary to reach the second level of analysis with respect to any of these items.

22                                   **2.       There Is a Rational Basis for Limitations on Conflict of**  
23                                   **Interest Rules.**

24                   Paragraph 24, item (g) of CFBC's Amended Complaint, which alleges a  
25 distinction between public officials, also does not pass the first equal protection hurdle. Public  
26 officials who do not operate under the same conflict of interest limitations as the ICOC are not  
27 members of a board designed as a panel of experts, which could not function absent these  
28 exemptions. Each of the listed exemptions is necessary to permit these experts to serve on the

1 ICOC and conduct the work of CIRM (at the vast per diem of \$100 per day (Health & Saf. Code,  
2 § 125290.45, subd. (b)(2))), without losing their jobs or violating conflicts standards.

3 Even if the Court were to conclude that all public officials are similarly situated  
4 with respect to the legitimate purposes of the Act, the limitations put on conflicts of interest rules  
5 by Health & Safety Code section 125290.20, subdivision (g) would be sustained under the  
6 rational basis test. First, it is critical to note that the Act's limitations on conflict of interest laws  
7 do not sanction self-dealing. Members are forbidden to vote on matters that might directly  
8 benefit themselves or the institutions they work for, and are also forbidden to use their position to  
9 influence such a vote. (See Health & Saf. Code, § 125290.30, subd. (g)(1)(A), (g)(3).) Some of  
10 these limitations just provide clarity: they apply to matters that do not clearly come within the  
11 scope of conflicts of interest rules, but are not clearly excluded. To the extent that true  
12 exemptions are provided, they are rationally related to a legitimate purpose of the Act. Without  
13 these exemptions, the CIRM could not be governed by a panel of experts.

14 **a. Limitations on the scope of the Political Reform Act**  
15 **clarify its application and permit the ICOC to perform**  
16 **its statutory functions.**

17 Subdivision (g)(1) contains three limitations on the scope of the Political Reform  
18 Act. (See Gov. Code, § 87100 et seq.) First, ICOC members "may participate in a decision to  
19 approve or award a grant, loan, or contract to a nonprofit entity in the same field as his or her  
20 employer." (Health & Saf. Code, § 125290.30, subd. (g)(1)(A).) Second, ICOC members "may  
21 participate in a decision to approve or award a grant, loan, or contract to an entity for the purpose  
22 of research involving a disease from which a member or his or her immediate family suffers, or  
23 in which the member has an interest as a representative of a disease advocacy organization." (*Id.*,  
24 § 125290.30, subd. (g)(1)(B).) Third, adoption of medical and scientific standards (*id.*,  
25 § 125290.35) is exempted entirely. (*Id.*, § 125290.30, subd. (g)(1)(C).)

26 Under the Political Reform Act, a public official has a conflict of interest if it is  
27 reasonably foreseeable that a decision he or she participates in making will have a material  
28 financial effect on one of that official's financial interests. (Gov. Code, §§ 87100, 87103.) It is  
not clear that the matters addressed by subdivisions (g)(1)(A) and (g)(1)(B) come within this

1 prohibition. An argument might be made, however, that it is reasonably foreseeable that a vote  
2 on whether to fund a grant for diabetes research would affect the financial interests of a member  
3 whose child has diabetes, because the grant might lead to a cure that would ultimately save the  
4 member the expense of treating that child's disease. Arguably, the Political Reform Act would  
5 not even apply if the financial effect were contingent upon intervening decisions or events (see  
6 Cal. Code Regs., tit. 2, § 18706, subd. (b)(5)), or if the effect of the decision on the ICOC  
7 member would be the same as that on the general public (see Gov. Code, § 87103; Cal. Code  
8 Regs., tit. 2, § 18707 et seq.). The Act's first two limitations on the application of the Political  
9 Reform Act eliminate the uncertainty in this situation, which is a rational basis for the  
10 distinction. Subdivision (g)(1)(C) is a true exemption, but there is a rational basis for this  
11 distinction as well. Without it, all the members of the ICOC (all of whom, it could be argued,  
12 have some financial interest by virtue of the very professional affiliations that qualify them for  
13 appointment) could be disqualified from adopting medical and scientific standards, which is a  
14 critical part of the ICOC's mission.

15 **b. Exemption from the incompatible offices doctrine is**  
16 **rationally related to allowing the ICOC to function as a**  
**panel of experts.**

17 Subdivision (g)(2) exempts ICOC members from the incompatible offices  
18 doctrine, Government Code section 19990. Because under section 19990, public officials cannot  
19 receive anything of value from a person regulated by or seeking to do business with the official's  
20 agency, it would disqualify, for example, ICOC members employed by the University of  
21 California (which, because it is part of California's biotech industry, will be applying for grants  
22 and loans). Like the exemption in subdivision (g)(1)(C), this exemption is rationally related to  
23 allowing the ICOC to function as a panel of experts.

24 **c. Limitation on the scope of Government Code section**  
25 **1090 is rationally related to allowing the ICOC to**  
**function as a panel of experts.**

26 Subdivision (g)(3) limits the application of section 1090. It is critical to note that  
27 this limitation does not disturb section 1090's basic prohibition against a public official making a  
28 contract in which he or she has a financial interest. Under section 1090, however, an ICOC

1 member is conclusively presumed to have made any contract executed by the ICOC, even if the  
2 member has disqualified himself or herself from any and all participation in the making of the  
3 contract. (See Gov. Code, § 1092; *Thomson v. Call* (1985) 38 Cal.3d 633, 649-650.)  
4 Subdivision (g)(3) qualifies this conclusive presumption, which would otherwise make it  
5 impossible for the ICOC to function as constituted. For example, if the Act did not include this  
6 limitation, then under section 1090 no grants could be awarded to the University of California.  
7 This exemption, like the others previously discussed, is rationally related to a legitimate purpose  
8 of the Act.

9           The Second District reached a similar conclusion in *Coulter v. Board of*  
10 *Education of the Temple City Unified Sch. Dist.* (1974) 40 Cal.App.3d 445. In that case, county  
11 officials withheld a teacher's pay, believing her right to payment void under section 1090  
12 because her husband was a member of the board that approved a two percent cost of living  
13 increase in salary for all school district employees. (*Id.*, at pp. 449-450.) The court of appeal,  
14 affirming judgment for the teacher, held that section 1090 did not apply because the Legislature  
15 had provided that the validity of contracts would be established pursuant to the Education Code,  
16 under which the husband's vote and the contract were valid. (*Id.*, at pp. 452-454.) The court  
17 rejected the argument that the distinction under the Education Code was invalid on equal  
18 protection grounds (specifically, article IV, section 16 of the Constitution), holding that the intent  
19 of the Legislature to create an exemption in the Education Code from section 1090 was clear, and  
20 that the Legislature might have had several legitimate reasons for creating it – all based on the  
21 special status of school districts. (*Id.*, at pp. 453-454.) Similarly here, the people have created  
22 the ICOC as an agency with special status, and reasonably have accorded it exemptions from  
23 section 1090 consistent with that status.

24           In sum, there is no basis for an equal protection challenge. The Act limits the  
25 operation of conflict of interest rules at their margins, just enough to allow the ICOC to function  
26 as a panel qualified to serve by virtue of their expertise, rather than their political affiliations.  
27  
28

1                   **C.      CIRM and the ICOC Are Subject to the Exclusive Management and**  
2                   **Control of the State.**

3                   Plaintiffs allege that the Act violates article XVI, section 3 of the Constitution,  
4                   which provides in relevant part: No money shall ever be appropriated or drawn from the State  
5                   Treasury for the purpose or benefit of any corporation, association, asylum, hospital, or any other  
6                   institution not under the exclusive management and control of the State as a state institution  
7                   . . . ." These allegations are doubly flawed. First, they fail to account for article XXXV, section  
8                   6, which precludes any article XVI, section 3 challenge. Second, the allegations themselves fail  
9                   to state a violation.

10                               **1.      Article XXXV, Section 6 of the California Constitution**  
11                               **Precludes a Challenge to Proposition 71 Based Upon Article**  
12                               **XVI, Section 3.**

13                   As set forth below, CIRM meets all the requirements of article XVI, section 3.  
14                   But even if it did not, this argument would be answered fully by article XXXV, section 6, which  
15                   provides:

16                               *Notwithstanding any other provision of this Constitution or any*  
17                               *law, the institute [CIRM], which is established in state*  
18                               *government, may utilize state issued tax-exempt and taxable bonds*  
19                               *to fund its operations, medical and scientific research, including*  
20                               *therapy development through clinical trials, and facilities. (Cal.*  
21                               *Const., art. XXXV, § 6 [emphasis added].)*

22                   If there were a conflict between article XXXV, section 6, and article XVI, section 3, the more  
23                   recent enactment would prevail under the pro tanto repeal rule. (See *Hustedt v. Workers'*  
24                   *Compensation Appeals Bd.* (1981) 30 Cal.3d 329, 343 [holding that article XIV, section 4  
25                   effected a repeal pro tanto of any pre-existing constitutional provisions that conflicted with that  
26                   amendment].) A pro tanto repeal of conflicting state constitutional provisions removes, insofar  
27                   as necessary, any restrictions which would prohibit the realization of the objectives of the new  
28                   article. (*Ibid.*)



1                                   **2.     The Institute is Under Exclusive State Management and**  
2                                   **Control as a State Institution.**

3                   There is no conflict between article XXXV and article XVI, however, because  
4 CIRM is subject to exclusive state management and control. Article XVI, section 3 prevents the  
5 appropriation of funds from the state fisc for a purpose foreign to the interests of the state and  
6 outside its control. (*CART, supra*, 109 Cal.App.4th 792, 816.) It does not restrict the state in the  
7 expenditure of public funds for legitimate state purposes, or prohibit such expenditures merely  
8 because the state entity has some degree of autonomy or is run in an innovative manner. (*Ibid.*)  
9 The relevant inquiry is whether applicable legislative and executive controls are sufficient to  
10 assure that state funds are used to further state purposes without unduly inhibiting innovative  
11 programs that serve those purposes. (*Id.*, at pp. 817-818.)

12                  Plaintiffs do not address the central concern of article XVI, section 3; in fact, they  
13 concede that the funds appropriated by the Act are for a public purpose.<sup>8/</sup> The only basis for their  
14 challenge is that Proposition 71 gives the ICOC too much autonomy in how it goes about  
15 achieving those public purposes. The allegations fall into two categories. In the first category  
16 are allegations that CIRM and the ICOC are "unaccountable" to the public (Alameda Complaint,  
17 ¶¶ 12-15, 20-21; CFBC Amended Complaint, ¶ 26(a), (b), (c), (d), (e)); in the second are  
18 allegations that the Act is insufficiently specific about how research grants and loans are to be  
19 made (Alameda Complaint, ¶¶ 16-19; CFBC Amended Complaint, ¶ 26(f), (h), (i)). Each of  
20 these allegations fails because it is either demonstrably untrue, has previously been ruled  
21 insufficient grounds for invalidation, or is not relevant to the constitutional challenge alleged.

22                                   **a.     CIRM and the ICOC are subject to both legislative and**  
23                                   **executive control.**

24                  When considered in the full context of the Act, each of the allegations that CIRM  
25 or the ICOC is "unaccountable to the public" proves without merit. In fact, the Act's provisions  
26

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27                  8. Most cases addressing article XVI, section 3 challenges rise or fall on whether the funds  
28 appropriated are for a public purpose. (See *California Housing Finance Agency v. Elliott* (1976) 17  
Cal.3d 575, 586-587; *People v. City of Long Beach* (1959) 51 Cal.2d 875, 881-882; *Daggett v.*  
*Colgan* (1891) 92 Cal. 53, 54-56; *Frohliger v. Richardson* (1927) 63 Cal.App. 209, 214-216.)

1 and other applicable law governing all state agencies conclusively demonstrate that legislative  
2 and executive controls on the operation of CIRM and the ICOC are constitutionally sufficient to  
3 overcome this challenge to the voters' exercise of their power of initiative. First, the voters'  
4 intent to create a state institution is express in the constitution, which creates CIRM "in state  
5 government." (Cal. Const., art. XXXV, § 6.) Further, the complex requirements of the Act itself  
6 exceed the necessary indicia of state management and control.

7           That none of the members of the ICOC is an elected official is not grounds for  
8 invalidation (see Alameda Complaint, ¶ 12; CFBC Amended Complaint, ¶ 26(c)). If it were, the  
9 California Medical Assistance Commission, for example, whose members are appointed in a  
10 similar manner, would also be invalid. (See Welf. & Inst. Code, § 14165.2.) In *CART, supra*,  
11 109 Cal.App.4th 792, 822, the court held that appointment of elected officials is not necessary to  
12 demonstrate adequate state control; the fact that elected officials appoint the membership of the  
13 commission provides indirect and adequate public accountability. Here, elected officials – the  
14 Governor, Lieutenant Governor, Treasurer, Controller, Speaker and President Pro Tem – appoint  
15 or nominate 24 of 29 members of the ICOC. (Health & Saf. Code, § 125290.20.) The remaining  
16 five members are appointed by the Chancellors of the University of California, who are  
17 themselves public officials. (*Ibid.*; see *Dibb v. County of San Diego* (1994) 8 Cal.4th 1200,  
18 1211-1212 [defining a public officer].) Further, the allegation that ICOC members are not public  
19 officials is plainly untrue (see Alameda Complaint, ¶ 12). As a practical matter, each and every  
20 member of the ICOC is a public official: they take the oath of office, file disclosure forms, and  
21 conduct business pursuant to the open meeting, conflict of interest, and public records laws  
22 generally applicable to state agencies and public officials. (Health & Saf. Code, § 125290.30.)  
23 Indisputably, as well, they are public officials by definition: they occupy an office which is not  
24 transient, occasional, or incidental and some portion of the sovereign function has been delegated  
25 to them.<sup>2f</sup> (See *Dibb, supra*, at p. 1212.)

26  
27           9. The same analysis applies to the allegation that the ICOC is not subject to state  
28 management and control because some ICOC members "may from time to time delegate those duties  
to an executive officer of the entity or to the dean of the medical school . . . ." (Health & Saf. Code,  
(continued...))

1 The fact that the Act limits the discretion the elected officers may exercise in  
2 appointing members to the ICOC (Health & Saf. Code, § 125290.20), is no infirmity. (See  
3 Alameda Complaint, ¶ 13; CFBC Amended Complaint, ¶ 26(c).) It is an indication of state  
4 control, not the lack of it. This conclusion is implicit in *CART, supra*, 109 Cal.App.4th 792, 822.  
5 In that case, the court found that Proposition 10 was replete with state controls, based in part on  
6 its requirement that the Governor's appointments be made from specified groups – a county  
7 health officer, a county executive. The Act's requirement that appointees come from specified  
8 backgrounds or institutions does not make those appointees less accountable to their appointing  
9 authority or to the people of the state: under the oath of office, they are accountable by virtue of  
10 being public officials.

11 The allegation that working group members control fundamental decisions about  
12 the award of grants and are independent of the ICOC (Alameda Complaint, ¶ 14) is belied by the  
13 Act itself. First, the members of the working groups are appointed by the ICOC according to  
14 criteria set by the Act and include members of the ICOC. (Health & Saf. Code, §§ 125290.50,  
15 125290.55, 125290.60, 125290.65.) Second, each working group conducts expert inquiry and  
16 review, and then forwards resulting majority and minority recommendations to the ICOC, which  
17 exercises all decision-making authority. (*Ibid.*) Even the criteria for working group review is  
18 circumscribed by the Act. (See *id.*, §§ 125290.60, subd. (c); 125290.65, subd. (b).) The working  
19 groups have no authority independent of the ICOC.

20 Plaintiffs allege that because the Act itself does not provide for removal of ICOC  
21 or working group members (Alameda Complaint, ¶ 15; CFBC Amended Complaint, ¶ 26(e)), it  
22 cannot pass muster. This fact, however, is not grounds for finding lack of adequate state  
23 management and control. As the court pointed out in *CART, supra*, 109 Cal.App.4th 792, 822, fn.  
24 14, fixed terms and the lack of explicit provision for removal of appointees is not unique in state  
25 government. Here, as in that case, ICOC members are limited to two fixed terms of office. (*Id.*

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27 9. (...continued)  
28 § 125290.20, subd. (a)(2)(D); see CFBC Amended Complaint, ¶ 26(d).) The officers to whom these  
duties may be delegated are also accountable public officials, who take the oath of office, file  
disclosure forms, and conduct business pursuant to all the laws generally applicable to state agencies.

1 at p. 805; Health & Saf. Code, § 125290.20, subd. (c)(1).) The Act also does nothing to disturb  
2 the Attorney General's right to remove an ICOC member or alternate in a *quo warranto* action.  
3 (See Gov. Code, § 1770; *CART, supra*, at p. 822, fn. 14.)

4 In fact, the Act does not exempt CIRM or the ICOC from myriad statutory  
5 controls by which the state generally exercises management and control of state institutions and  
6 public officials. As the court pointed out in *CART, supra*, 109 Cal.App.4th 792, 825, these  
7 external controls include intervention by the Treasurer, Controller, Auditor, and Department of  
8 Finance to monitor how the bond revenues are spent. (*See ibid.*, citing Gov. Code, §§ 12410,  
9 13070, 13030, 8545.2, subd. (a), 8546.1, 8546.7, 8547.5.) External state control of the ICOC  
10 also includes legislative oversight. (See RJN, ¶ 21 & Exh. M.) These controls flatly contradict  
11 the allegation that there are insufficient external controls on the public funds that the ICOC  
12 administers. In addition to these generally applicable external controls, the Act itself provides for  
13 an annual public report, an annual financial audit to be provided to and publicly reported on by  
14 the Controller, and a Citizens' Financial Accountability Oversight Committee. (Health & Saf.  
15 Code, § 125290.30, subd. (a), (b), (c).)

16 In sum, none of the allegations that the ICOC is unaccountable to the public are  
17 adequate, as a matter of law, to undermine the will of the people of California and invalidate the  
18 Act. State management and control is both evident and incontrovertible.

19 **b. The Act is specific about how the bond proceeds must**  
20 **be spent.**

21 It is well-established that discretion can be delegated to a state actor or agency, so  
22 long as there is state management and control. "[T]he required exclusive control permits the  
23 Legislature or the electorate to fund entities that are provided a degree of flexibility and  
24 operational independence that encourages the development of innovative practices through  
25 experimentation with the objective of satisfying the underlying state purpose." (*CART, supra*,  
26 109 Cal.App.4th 792, 817; see also *Panama-Pacific, supra*, 178 Cal. 746, 749-750; *Stephens v.*  
27 *Chambers* (1917) 34 Cal.App. 660, 672-674 [rejecting as a basis for invalidation that language  
28 governing expenditure of funds was too ambiguous and left too much to governor's discretion].)

1 As demonstrated above, the state executive and legislature do have exclusive management and  
2 control of CIRM and the ICOC. Accordingly, plaintiffs' charges of insufficient specificity are  
3 not grounds to invalidate the Act. Further, these allegations do not withstand scrutiny in light of  
4 the requirements of the Act itself, which are far more specific than others courts have approved.  
5 (See generally *California State Automobile Ass'n Inter-Insurance Bureau v. Downey* (1950) 39  
6 Cal.App.2d 876, 900-902 [collecting legislative delegations to administrative agencies found  
7 valid under separation of powers analysis].)

8           The allegation that the Act does not provide criteria for making grants and loans  
9 (Alameda Complaint, ¶ 16; CFBC Amended Complaint, ¶ 26(f), (h)) is meritless. The  
10 Constitution expressly provides that grants and loans must be made for "stem cell research, for  
11 research facilities, and for other vital research opportunities to realize therapies, protocols, and/or  
12 medical procedures that will result in, as speedily as possible, the cure for, and/or substantial  
13 mitigation of, major diseases, injuries and orphan diseases." (Cal. Const., art. XXXV, § 2, subd.  
14 (a).) The Act also provides for the establishment of medical and scientific accountability  
15 standards for the award of grants and loans. (Health & Saf. Code, § 125290.35, 125290.55,  
16 125290.60, subd. (b)(4).) It provides that funding will not duplicate that of the National  
17 Institutes of Health. (*id.*, § 125290.60, subd. (c)(1)(C).) It details appropriation and allocation of  
18 funding, for example: 97 percent of the bond proceeds must be used for grants and grant  
19 oversight; 90 percent of the amount used for grants must be used for research, and up to 10  
20 percent on research facilities; indirect costs must be limited to 25 percent of a research grant; not  
21 more than three percent of the bond proceeds may be used for implementation costs; and not  
22 more than three percent of the bond proceeds shall be used for CIRM's administrative costs. (*Id.*,  
23 § 125290.70, subd. (a).)

24           The Act does not, as the complaints allege (Alameda Complaint, ¶ 17; CFBC  
25 Amended Complaint, ¶ 26(h)), permit grants and loans to fund just "any scientific and medical  
26 research." (See discussion, *supra*, at p. 12.) Further, this discretion to fund "other vital research  
27 opportunities" is necessary to avoid a situation in which an opportunity for a cure or a piece of a  
28 cure is cut off from funding because it does not strictly involve stem cell research.

Contrary to the allegations of the complaints (Alameda Complaint, ¶ 18; CFBC Amended Complaint, ¶ 26(f), (g), (i)), the Act plainly provides guidelines for the adoption of standards, which are to be based on those set by the National Institutes for Health. (Health & Saf. Code, §§ 125290.35; 125290.50, subd. (e); 125290.55, subd. (b)(2); 125290.60; 125290.65; 125290.70.) Finally, the allegations that the Act does not provide guidelines for fashioning intellectual property agreements (Alameda Complaint, ¶ 19; CFBC Amended Complaint, § 26(h)), are incorrect. The Act requires that the state benefit from such agreements, but that those benefits be balanced against the practicalities of bringing a therapy or cure to fruition. (Health & Saf. Code, § 125290.30, subd. (h)). Given the highly technical and groundbreaking nature of the work contemplated by the Act, as well as the medical, scientific, technical, ethical, and legal expertise the Act marshals to inquire into and make recommendations to the ICOC on these issues, these guidelines are sufficient. Greater specificity and an attendant lack of flexibility would likely impede the development of appropriate standards as the science and ethical dimensions of this work evolve.

The discretion the Act gives to the ICOC does not permit the ICOC to spend state funds on programs inconsistent with the purposes of the Act. (See *CART*, *supra*, 109 Cal.App.4th 792, 823-824.) As a matter of law, the Act strikes a constitutional balance between providing the necessary specificity and avoiding interference with innovation.

**D. The Act Does Not Interfere with the Autonomy of the Regents.**

Article IX, section 9, subdivision (a) of the Constitution provides in relevant part: "The University of California shall constitute a public trust, to be administered by the existing corporation known as 'The Regents of the University of California,' with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university . . . ." Although the Regents enjoy broad powers to organize and govern the university, they are not entirely autonomous. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320-21.) The Regents are subject to the regulation of the Legislature in three areas, including "when legislation regulating public agency activity addresses matters of

1 statewide concern not involving internal university affairs . . . ." (*Id.*, at p. 321; see *Coutin v.*  
2 *Lucas* (1990) 220 Cal.App.3d 1016, 1025.)

3 CFBC alleges that the Act violates article IX, section 9 "because it unlawfully  
4 invades the authority of, and delegates authority to, the Regents . . . ." (CFBC Amended  
5 Complaint, ¶ 30.) Although it does not cite to the Act, these allegations likely refer to the section  
6 providing an exemption from the incompatible offices doctrine (Health & Saf. Code,  
7 § 125290.30, subd. (g)(2)), and the section giving the power to appoint one member of the ICOC  
8 to the Chancellors of five of the University of California campuses (*id.*, § 125290.20, subd.  
9 (a)(1)), which are the only sections of the Act that touch on action by the Regents. These  
10 allegations do not state a claim because these sections address matters of statewide concern – the  
11 establishment of a state-wide program supporting stem cell research – rather than internal  
12 university affairs. The university is not immune from the effects of legislation on matters of  
13 paramount statewide concern merely because that legislation may affect its internal affairs;  
14 "legislation on subjects of general statewide importance applies to the university *unless* the  
15 matter is *exclusively internal* to the university." (*Coutin v. Lucas, supra*, 220 Cal.App.3d 1016,  
16 1026.) CFBC cannot state a cause of action on these grounds.

17 **III. THE STATUTORY AND COMMON LAW CHALLENGES ALLEGED DO**  
18 **NOT STATE A CLAIM FOR INVALIDATING EITHER THE BONDS OR**  
19 **THE ACT.**

20 CFBC alleges several different statutory and common-law grounds for  
21 invalidating the Act: statutory and common-law conflict of interest rules (CFBC Amended  
22 Complaint, ¶¶ 15, 20); the effect of those violations on the contracts of CIRM and the ICOC  
23 under Civil Code section 1667 (*id.*, ¶ 18); and violation of unspecified federal and state bond and  
24 tax laws (*id.*, ¶ 31). It is well-established that the constitutional and statutory provisions of the  
25 Act can only be invalidated if they run afoul of the Constitution itself. (See *Wilson v. State Bd. of*  
26 *Education* (1999) 75 Cal.App.4th 1125, 1134.) To the extent that the statutory provisions of the  
27 Act conflict with other, preexisting statutes, it would be the court's duty to try and reconcile their  
28 operation. (See *In re Lance W.* (1985) 37 Cal.3d 873, 876.) If the statutes could not be  
reconciled, the provisions of the Act, which are both more specific and later in time, would

1 prevail. (See *In re Marriage of Harris* (2004) 34 Cal.4th 210, 222.) Accordingly, because none  
2 of the statutory and common law provisions CFBC alleges would render the Act or the bonds  
3 invalid, judgment on the pleadings may be granted. (See e.g., *Kline v. San Francisco Unified*  
4 *Sch. Dist.* (1940) 40 Cal.App.2d 174, 178 [affirming general demurrer and order striking from  
5 the complaint allegations that were irrelevant and stated no issue upon which proof might have  
6 been tendered].)

7 **CONCLUSION**

8 For the foregoing reasons, defendants request that this Court grant their Motion  
9 for Judgment on the Consolidated Pleadings in its entirety, without leave to amend, and enter a  
10 final judgment in favor of defendants.

11 Dated: October 12, 2005

Respectfully submitted,

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of California; and the California Stem Cell  
Research and Cures Finance Committee.



**DECLARATION OF SERVICE BY FEDEX & EXPRESS MAIL**

Case Name: **PEOPLE'S ADVOCATE, et al., v. INDEPENDENT CITIZENS' OVERSIGHT COMMITTEE, et al.,**

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**CALIFORNIA FAMILY BIOETHICS COUNCIL, LLC, v. CALIFORNIA INSTITUTE FOR REGENERATIVE MEDICINE, et al.**

Case No's. **HG05206766 & 05AS02927**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 12, 2005, I served the attached **DEFENDANTS' MOTION FOR JUDGMENT ON THE CONSOLIDATED PLEADINGS, NOTICE OF HEARING, AND MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF (Code Civ. Proce., § 438); PROPOSED ORDER, and DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR JUDGMENT ON THE CONSOLIDATED PLEADINGS & SUPPORTING DECLARATION OF TAMAR PACHTER (Evid. Code, §§ 452, 453)** by placing a true copy in a sealed envelope as Federal Express Mail and Express Mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, addressed as follows:

(via Fedex only)

Dana Cody  
Life Legal Defense Foundation  
7653 Away Way  
Citrus Heights, CA 95610

(via Fedex only)

Robert M. Taylor  
30942 Via Mirador  
San Juan Capistrano, CA 92675

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Terry L. Thompson  
P.O. Box 1346  
Alamo, CA 94507

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P.O. Box 1313  
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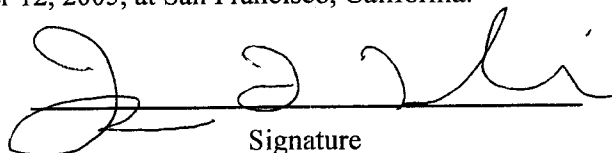
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on October 12, 2005, at San Francisco, California.

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James J. Mirarchi

Typed Name



Signature